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INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE JOINT PETITION OF )  
INDIANA MICHIGAN POWER COMPANY, )  
NORTHERN INDIANA PUBLIC SERVICE COMPANY, )  
INDIANAPOLIS POWER & LIGHT COMPANY, AND )  
DUKE ENERGY INDIANA, INC. FOR )  
APPROVAL OF TRANSACTIONS ENTERED INTO )  
PURSUANT TO A SPARE TRANSFORMER SHARING )  
AGREEMENT AND ALTERNATIVE REQUEST, )  
PURSUANT TO IND. CODE 8-1-2.5-5, FOR THE )  
COMMISSION TO DECLINE TO EXERCISE ITS )  
JURISDICTION TO APPROVE TRANSACTIONS )  
ENTERED INTO PURSUANT TO SAID AGREEMENT )

CAUSE NO. 43181

APPROVED: MAR 22 2007

**BY THE COMMISSION:**

**David E. Ziegner, Commissioner**

**Loraine L. Seyfried, Administrative Law Judge**

On November 22, 2006, Indiana Michigan Power Company ("I&M"), Northern Indiana Public Service Company ("NIPSCO"), Indianapolis Power & Light Company ("IPL") and Duke Energy Indiana ("Duke"), filed their Verified Joint Petition for approval of transactions entered into pursuant to a Spare Transformer Sharing Agreement ("Sharing Agreement") and their alternative request, pursuant to Ind. Code § 8-1-2.5-5, for the Indiana Utility Regulatory Commission ("Commission") to decline to exercise its jurisdiction to approve transactions entered into pursuant to the Sharing Agreement.

On December 19, 2006, Joint Petitioners I&M, IPL and NIPSCO prefiled verified direct testimonies and exhibits. On December 20, 2006, Commonwealth Edison of Indiana, Inc. ("Edison Indiana") filed its Petition to Intervene and requested the same relief sought by Joint Petitioners. No party objected to Edison Indiana's intervention, which was granted at the Prehearing Conference. On December 22, 2006, Joint Petitioner Duke filed its verified direct testimony.

On December 28, 2006, the Commission issued a Prehearing Conference Order which, among other things, established a procedural schedule for this Cause. On January 12, 2007, Edison Indiana prefiled its verified direct testimony. On February 14, 2007, in accordance with an extension of time granted by the presiding officers, the Indiana Office of the Utility Consumer Counselor ("OUCC") filed the testimony of Joan Soller, which stated that the OUCC had met with the Joint Petitioners and Intervenor Commonwealth Edison of Indiana and that the parties had reached a settlement.

On February 20, 2007, the Joint Petitioners, Intervenor and the OUCC (collectively "Settling Parties") filed and requested Commission approval of a Stipulation and Settlement Agreement ("Settlement Agreement"). On March 5, 2007, the Commission issued two data requests and the Settling Parties responded to same on March 8, 2007.

Pursuant to notice given and published as provided by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, an evidentiary hearing was held on March 9, 2007 at 10:00 a.m. E.S.T., in Room E-306 of the Indiana Government Center South, Indianapolis, Indiana. Joint Petitioners, Intervenor and the OUCC participated in the hearing at which time the Settlement Agreement and testimony and exhibits of Joint Petitioner and Edison Indiana were offered and admitted into the record without objection. No members of the general public appeared at the hearing. The Settling Parties submitted their proposed order at the hearing.

The Commission, based upon the applicable law and the evidence of record, now finds as follows:

1. **Jurisdiction and Notice.** Due, legal and timely notice of the hearing in this Cause was given as required by law. Each Joint Petitioner and Intervenor (hereinafter "Indiana Participating Utilities") is a "public utility" within the meaning of Ind. Code § 8-1-2-1 and an "energy utility" providing "retail energy service" within the meaning of Ind. Code §§ 8-1-2.5-2 and 8-1-2.5-3. Each Indiana Participating Utility is lawfully engaged in the provision of electric services under duly acquired indeterminate permits and franchises within Indiana and is subject to the jurisdiction of the Commission in the manner and to the extent provided by the laws of the State of Indiana.

2. **Indiana Participating Utilities' Characteristics and Businesses.** I&M, a wholly-owned subsidiary of American Electric Power Company, Inc., is a corporation organized and existing under the laws of the State of Indiana, with its principal office and place of business located at One Summit Square, Fort Wayne, Indiana. I&M's service area consists of approximately 8,260 square miles and is located in northern and eastern Indiana and southwest Michigan. I&M's electric system is a completely integrated and interconnected entity and is operated as a single utility. I&M provides electric service to approximately 454,000 retail electric customers within the State of Indiana.

IPL is a corporation organized and existing under the laws of the State of Indiana, with its principal office located at One Monument Circle, Indianapolis, Indiana. IPL's service area consists of approximately 528 square miles and is located principally in and around the City of Indianapolis and in portions of the following Indiana counties: Boone, Hamilton, Hancock, Hendricks, Johnson, Marion, Morgan, Owen, Putnam and Shelby. IPL provides electric service to approximately 465,000 retail electric customers within the State of Indiana.

NIPSCO is a corporation organized and existing under the laws of the State of Indiana, with its principal office and place of business located at 801 East 86<sup>th</sup> Avenue, Merrillville, Indiana. NIPSCO provides electric service to approximately 450,000 retail electric customers located in 21 counties in northern Indiana.

Duke is a corporation organized and existing under the laws of the State of Indiana, with its principal office and place of business located at 1000 East Main Street, Plainfield, Indiana. Duke provides electric service to over 750,000 retail electric customers located in 69 counties in the central, north central and southern parts of the State of Indiana.

Edison Indiana is a corporation organized and existing under the laws of the State of Indiana with electric transmission facilities in Lake County, Indiana. Edison Indiana is a wholly-owned subsidiary of Commonwealth Edison Company ("ComEd"), a corporation organized and existing under the laws of the State of Illinois which is engaged in supplying electric energy to the public in the northern portion of Illinois. ComEd does not sell the electric energy generated by Edison Indiana to any retail customers in Indiana, but occasionally does sell to wholesale customers located in Indiana. Edison Indiana is engaged in the operation of certain electricity generation and transmission facilities for the sole benefit of ComEd.

**3. Sharing Agreement and Relief Requested.** Each Indiana Participating Utility has entered into the Sharing Agreement among themselves and other electric utility companies which are not located in Indiana and, consequently, which are not subject to the Commission's jurisdiction. The Sharing Agreement provides for the sharing of voltage transformers in the event of a deliberate, documented attack of terrorism, as defined in the Federal Homeland Security Act of 2002. The Sharing Agreement allows for a source of needed transformers that is pre-identified, with financial arrangements pre-agreed upon, and the terms for providing the units pre-established. To the extent an emergency transaction requires one or more of the Indiana Participating Utilities to sell or buy transformer(s) to or from one or more of the other Indiana Participating Utilities, the involved public utilities may be required to obtain Commission approval under Ind. Code § 8-1-2-84 prior to entering into any such transaction. Because the Sharing Agreement concerns transactions resulting only from a terrorist attack, the need to obtain Commission approval at the time of the transaction would unnecessarily burden, if not adversely affect, the response to the emergency and could delay the restoration of service. The Indiana Participating Utilities believe the public interest will be served by the Commission granting approval to Indiana public utilities that are now, or may become, signatories to the Sharing Agreement to enter into transactions thereunder. The Indiana Participating Utilities request approval under Ind. Code § 8-1-2-84 authorizing Indiana public utilities who are or may become a party to the Sharing Agreement to enter into transactions thereunder. In the alternative, the Indiana Participating Utilities request the Commission under Ind. Code § 8-1-2.5-5 to decline to exercise its jurisdiction under Ind. Code § 8-1-2-84 to approve transactions under the Sharing Agreement.

**4. Evidence.** The Indiana Participating Utilities provided evidence explaining the Sharing Agreement, its purpose, benefits, and impact on their respective companies. The record shows that as part of the country's homeland security preparations, and with the assistance of the Edison Electric Institute ("EEI"), the Indiana Participating Utilities and other electric utilities across the country entered into the Sharing Agreement. *Joint Petitioner's Exhibit PBJ*, p. 5. The parties to the Sharing Agreement commit spare transformers, by voltage or equipment class, so that in the event of a clearly defined triggering event, an affected member of a particular class has a call right to purchase spare transformers committed by the participating utilities in such equipment class. *Id.* at 6. Under the terms of the Sharing Agreement, participating utilities could be obligated to sell certain transformers, if physically available, at the purchase price set forth in the Sharing Agreement. *Id.*

In the event of a triggering incident on the Indiana Participating Utilities' respective systems which causes the destruction or long term disabling of a transformer(s), the affected company(ies) will have access to a large number of spare transformers made available by the other signatories to the Sharing Agreement, thereby benefiting the restoration of electric service. *Joint Petitioner's Exhibit PBJ* at 6. The Sharing Agreement does not impact the ability of

participants to use spares to replace failed units, sell or lease transformers to another utility, or retire older units. *Id.* at 6-7. The record shows that the Indiana Participating Utilities retain ownership and possession of their spare transformers until such time as a transaction occurs under the Sharing Agreement. Thus, in the normal course of business, an Indiana Participating Utility can use its transformers but if such usage occurs, must take action, such as ordering a new transformer to acquire sufficient spares, to permit the Indiana Participating Utility to meet the calculated minimum spare complement required under the Agreement. *Id.* at 6.

The record shows that the Sharing Agreement helps to address the utilities' potential need for assistance in the event of a triggering event and minimizes costs. Meaning, a utility generally maintains sufficient spare transformers to address unexpected events that may arise from time to time in the normal course of events. The Indiana Participating Utilities also take steps to protect infrastructure from possible terrorist attack. Nevertheless, a coordinated terrorist attack can be catastrophic. *Joint Petitioner's Exhibit PBJ* at 8. It would not be economically efficient or practical for an individual company to maintain in its inventory the large number of spare transformers that may be necessary to address every "worst case scenario" that may be imagined. *Id.* at 8-9

One of the cited benefits of the Sharing Agreement is that the Indiana Participating Utilities have pre-identified and pre-agreed to the financial arrangements regarding the purchase price. *Joint Petitioner's Exhibit PBJ* at 10. The Sharing Agreement states that the purchase price is either the replacement cost or net book value, as elected by the seller, plus appropriate loadings, transportation and taxes. The seller has the responsibility of informing the buyer of the estimated purchase price within three days of a call notice. No later than six (6) months after the agreed purchase, the seller will give the buyer written documentation of the seller's actual costs, expenses and tax liability, if any, attributable to the sale. In addition, the Sharing Agreement provides a procedure for the resolution of any dispute that may arise out of the purchase price. *Id.*

The record evidence identifies each Indiana Participating Utility's obligations under the Sharing Agreement, including the transformer class joined by the utility and, the expected number of spare transformers the utility could be obligated to provide under the Sharing Agreement.

**5. Settlement Agreement.** The Settling Parties agree that substantial evidence of record shows that the public interest will be served by approval of the relief sought in this proceeding in accordance with the terms and conditions in the Settlement Agreement, a copy of which is attached hereto and incorporated by reference. The Settlement Agreement provides that each Indiana Participating Utility will notify the Commission and the OUCC of actions taken under the Sharing Agreement, including such actions as the occurrence of a triggering event, issuance or receipt of a Call Notice, purchase or sale of a spare transformer, a force majeure, or waiver under the Sharing Agreement. Although the Settlement Agreement did not prescribe a time line for submission of such notices, the Indiana Participating Utilities indicated in response to a March 5, 2007 docket entry that written notice of the matters identified in Section A, Paragraph 3 of the Settlement Agreement should be provided within 45 days following the identified event or the availability of the information identified in the Settlement Agreement.

The Settlement Agreement also requires the Indiana Participating Utilities to provide notice to the Commission and the OUCC of any amendments to the Sharing Agreement (other than renewal or the addition of a non-Indiana Participating Utility) and to identify any

transactions under the Sharing Agreement with an affiliate pursuant to Ind. Code § 8-1-2-49(2).<sup>1</sup> Should a transaction between Indiana Participating Utilities occur under the Sharing Agreement, the Settlement Agreement provides that the utility involved shall provide certain confidential information regarding the transaction to the Commission and OUCC provided such information is maintained as confidential and exempt from public disclosure.

The Settlement Agreement also provides a streamlined procedure for Commission approval of the participation in the Settlement Agreement by an electric utility that becomes a party to the Sharing Agreement in the future. In addition, notice to an electric utility's customers of the utility's election to become a party to the Sharing Agreement would be coordinated with the Commission at the time of the utility's election. *See* Indiana Participating Utilities' response to the Commission's March 5, 2007 docket entry.

**6. Commission Discussion and Findings.** We find the evidence presented demonstrates the Sharing Agreement is consistent with the conditions under which utilities must operate in today's world and supports the national effort to protect our electric infrastructure in the event of terrorist activities. The record also shows that the Sharing Agreement promotes efficiency and enhances reliability because it allows for a source of needed transformers that is pre-identified, with financial arrangements pre-agreed upon, and the terms for providing the units pre-established. In so doing, the Sharing Agreement makes efficient use of the industry's existing spare transformers and provides a mechanism which may help signatories to the Sharing Agreement minimize the time required to restore electric service in the event of a terrorist attack. Based on the evidence of record, we find that approval of the Sharing Agreement serves the public interest and is consistent with the factors set forth in Ind. Code § 8-1-2.5-5. Approval of the relief sought herein is beneficial to the State, customers and the Indiana Participating Utilities, and provides the Indiana Participating Utilities with a higher level of preparedness in the event of an attack on the electric system. In the event that an Indiana Participating Utility would fall victim to a triggering event under the Sharing Agreement, the affected company would be able to acquire from other signatory electric utilities a number of available spare transformers to restore electric service. In addition, if another signatory electric utility were a victim of such an extreme event, an Indiana Participating Utility(ies) could be one of many signatories called upon to supply spare transformers to restore the transmission system of another utility to a minimal level. Since the restoration of the electric system is important to the national economy and well-being, Indiana would benefit from the Sharing Agreement even if the attack occurs outside the State.

The Sharing Agreement sets forth the terms and conditions, including a formula for determining price, applicable to transactions which may occur thereunder. As a result, the parties, price and other terms and conditions are sufficiently identified at this time so as to allow the Commission to consider for approval, in accordance with Ind. Code § 8-1-2-84, such transactions in advance of the emergency conditions under which they may arise. By granting advance consent and approval, the Indiana Participating Utilities will know that they can act promptly and in a cooperative fashion to restore service to their customers. This will be particularly important at a time of uncertainty caused by terrorist attacks.

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<sup>1</sup> Because certain of their respective company affiliates are parties to the Sharing Agreement, I&M and Duke Energy Indiana each filed the Agreement with the Commission pursuant to Ind. Code § 8-1-2-49.

On September 21, 2006, the Federal Energy Regulatory Commission ("FERC") approved the application of FERC-jurisdictional signatories to the Sharing Agreement for authority to engage in future required transfers under the Sharing Agreement. *Re Edison Electric Institute on behalf of the Jurisdictional Signatories*, Docket Nos. EC06-140-000, EL06-86-000, 116 FERC ¶61,280, 2006 FERC LEXIS 2138 (FERC 9/22/06). FERC found that participation in the Sharing Agreement is prudent and will enhance the reliability of the transmission system and security of the nation's energy supply infrastructure. We agree. Other State Commissions have also granted authority for utilities to engage in future transfers under the Sharing Agreement. *In the Matter of the Application of Idaho Power Company*, Case No. IPC-E-06-27, 2007 Ida. PUC LEXIS 1 (Idaho PUC 1/3/07); *In the Matter of the Joint Petition of Columbus Southern Power Company et al*, Case No. 06-1268-EL-ATR, 2006 Ohio PUC LEXIS 773 (PUCO 12/13/06); *Re Petition of Puget Sound Energy*, Docket UE-061382, 2006 Wash UTC LEXIS 518 (Wash UTC 11/8/06); *In re Application of Duke Power Company*, Docket No. 2006-156-E, 2006 S.C. PUC LEXIS 128 (SC PSC 7/11/06).

Accordingly, the Commission finds that the public interest will be served by granting approval to Indiana public utilities that are now, or may become, signatories to the Sharing Agreement to enter into transactions under the Sharing Agreement in accordance with the terms of the Settlement Agreement. A public utility electing to become a signatory to the Sharing Agreement after the date of this order shall coordinate with the Commission to provide notice to its customers. The Indiana Participating Utilities should provide the information to the Commission in accordance with the Settlement Agreement and within the time frames indicated in paragraph 5 above.

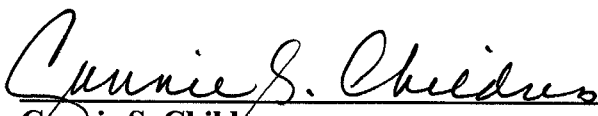
**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:**

1. The Settlement Agreement shall be and hereby is approved in its entirety.
2. The Indiana Participating Utilities shall be and hereby are authorized to enter into transactions pursuant to the Sharing Agreement.
3. This Order shall be effective on and after the date of its approval.

**GOLC, LANDIS, SERVER AND ZIEGNER CONCUR; HARDY ABSENT:**

**APPROVED:** MAR 22 2007

**I hereby certify that the above is a true and correct copy of the Order as approved.**

  
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**Connie S. Childress**  
**Acting Secretary to the Commission**